IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION.

WRIT PETITION NO.3729 OF 2006

Smt Savita @ Kashibai Nagnath Gund, .. Petitioner

Vs

1. Smt Chitrabai @ Vanita Ramchandra Gurv and ors. .. Respondents

Mr S.P.Chandre, for the petitioner.

CORAM : D.B.BHOSALE,J.
DATE : 05.10.2006

PC:

1. Heard the learned counsel for the petitioner.

2. Rule. Returnable forthwith. By consent, rule is heard finally.

3. By the impugned order, the petitioner-plaintiff's application under Order 6 Rule 17 of CPC has been rejected, holding that the amendment sought would change the whole nature of the suit and that will cause serious prejudice to the petitioner. The suit is filed for specific performance of contract. In paragraph 2 of the plaint, the plaintiffs have specifically averred that the questioned agreement was executed by Ramchandra Gurve for legal necessity. By amendment the petitioner-plaintiff seeks to explain the legal necessity by making reference to purchase of the second

hand truck and loss caused in the business which made Ramchadra Gurve to execute the agreement in question. In my opinion, if the amendment is allowed, this will not change the nature of the suit at all. By way of amendment, the petitioner-plaintiff only intends to give particulars about the legal necessity pleaded in the plaint. It is now well settled that all amendments of the pleadings should be allowed which are necessary for determination of the real controversy in the suit provided the proposed amendment does not alter or substitue a new cause of action on the basis of which the original lis was raised or defence taken. If the amendment is allowed, it shall definitely not alter or substitute the cause of action on the basis of which original lis was raised. In the circumstances, this writ petition is allowed subject to payment of cost of Rs.500/- to be paid by the petitioner to the defendants within two weeks from the date of receipt of this order. The petitioner is allowed to carry out amendment only on the payment of cost within two weeks therefrom, failing which the trial court shall proceed with the suit without amendment. The writ petition is accordingly disposed of.

. An authenticated copy of this order may be made available to the parties.

(D.B.BHOSALE,J.)